UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SHARON CHENG, CRISTINA DIAS, RHONDA SANFILIPO, BRUCE PULEO, ZINA PRUITT, RON ZIMMERMAN, CHERYL SILVERSTEIN, TINA FENG, ROBERT HAKIM, BERNADETTE GRIMES, ELIZABETH GENDRON, ROGER CARTER, MARLENE RUDOLPH, PATRICIA BARLOW, TERESA EDWARDS, ISAAC TORDJMAN, JAMES HETTINGER, DIEU LE, CHRIS BOHN, DANIEL DEWEERDT, CRAIG BOXER, BETTY DENDY, ELIZABETH PERSAK, KRISTI ROCK, JENNIFER CHALAL, JOHN TORRANCE, LENARD SHOEMAKER, MICHAEL MITCHELL, ROBERT SKELTON, JEFFREY JONES, ISABEL MARQUES, PAYAM RASTEGAR, and SYED ABDUL NAFAY, individually and on behalf of all others similarly situated, Plaintiffs, v. TOYOTA MOTOR CORPORATION, TOYOTA MOTOR NORTH AMERICA, INC., and DENSO INTERNATIONAL AMERICA, INC., Defendants.	Case No: 1:20-cv-00629-WFK-JRC

TOYOTA MOTOR CORPORATION AND TOYOTA MOTOR NORTH AMERICA, INC.'S MEMORANDUM OF LAW IN SUPPORT FOR ENTRY OF AN ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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INTRODUCTION

Defendants Toyota Motor Corporation ("TMC") and Toyota Motor North America, Inc. ("TMNA," and together with TMC, "Toyota") requests that this Court finally approve this comprehensive class action Settlement[1] that was preliminarily approved on September 16, 2022, and find that it is "fair, reasonable and adequate," as is required by Fed. R. Civ. P. 23(e), as amended. The Parties engaged in extensive litigation and confirmatory discovery, including the production by Defendants of approximately 655,000 documents, containing approximately 1.5 million pages of documents related to the allegations in the complaints and confirmatory employee witness interviews. The Parties also engaged in extensive motion practice with multiple pre-motion letters and motions to dismiss, and other pretrial activities for more than two years.

While the parties were litigating and conducing discovery in the Action, the Parties were also engaged in settlement discussions. When settlement negotiations became more focused and intensified, the Parties worked with mediator Patrick A. Juneau who was subsequently appointed by the Court as Settlement Special Master on November 3, 2021. The Settlement Special Master provided valuable oversight and input to the Parties during the negotiations. Finally, after all of the material terms were agreed upon, the Settlement Special Master mediated the attorneys' fees and, in fact, provided the Parties a mediator's number for the attorneys' fees, which aided the Parties in resolving this issue. At all times, the Parties' negotiations were at arm's length, intense and included numerous video conferences, and weekly, if not daily, emails and phone calls.

After a year of negotiations, following extensive discovery and litigation, Class Counsel, Toyota, and Denso executed a Settlement Agreement that provides targeted, multifaceted, and

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1 All capitalized terms shall have the meaning ascribed to them in the Settlement Agreement unless otherwise specified herein.

immediate relief to the Class Members to fully and finally resolve this Action. The preliminarily-approved Settlement relief includes:

(1) a **15-year Customer Support Program for Additional Vehicles**, which provides prospective coverage for repairs;

(2) a **15-year/150,000 miles Extended New Parts Warranty for Subject Vehicles and SSC Vehicles**, which provides an extended new parts warranty coverage for the fuel pump kit replaced on Subject Vehicles;

(3) a **Loaner/Towing Program** for vehicles being repaired under the CSP or the Extended New Parts Warranty; and

(4) an **out-of-pocket claims reimbursement process** that will provide reimbursement for certain previously paid out-of-pocket expenses incurred to repair or replace a Fuel Pump of Covered Vehicles that were not otherwise reimbursed.

While every settlement requires appropriate compromise by all parties, this comprehensive Settlement provides significant, valuable, and immediate benefits to the Class, who are also Toyota and Lexus customers, that own or lease approximately 4.9 million Toyota and Lexus vehicles. The proposed Settlement should be finally approved, pursuant to Rule 23, including the Amendments thereto, because the Settlement more than satisfies each of the nine factors set forth in *City of Detroit v. Grinnell Corp.,* 495 F.2d 448, 463 (2d Cir. 1974). *See McArthur v. Edge Fitness, LLC,* No. 3:l7- CV-1554 (RMS), 2019 WL 718540 (D. Conn. Feb. 20, 2019) (using the *Grinnell* factors to analyze a proposed Class Action for final approval after the publication amendments to Rule 23).[2]

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2 In accordance with this Court's order and deadlines, the Settlement Notice Administrator shall file with the Court the results of the dissemination of the Notice on December 5, 2022. Toyota will address the notice process in its Supplemental Memorandum of Law in Further Support of the Settlement, to be filed with the Court by December 9, 2022. *See* Preliminary Approval Order, Dkt. 167, at 16.

I. BACKGROUND

A. Plaintiffs' Allegations and Claims

On February 4, 2020, Plaintiff Sharon Cheng filed a class action complaint in the United States District Court for the Eastern District of New York, asserting that certain Toyota and Lexus vehicles were equipped with defective fuel pumps. Toyota refers the Court to its Memorandum of Law in Support for Entry of an Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Memorandum"), for a more complete discussion of Plaintiffs' claims and requests for damages, related actions, and consolidation. *See* Preliminary Approval Memorandum, Dkt. No. 163, at pp. 3-8.

B. Motion Practice, Discovery, and Settlement Negotiations

For over two years, the parties engaged in active litigation, motions practice, and substantial discovery. Among other things, on January 15, 2021, TMNA and DIAM served their motions to dismiss the Second Amended Consolidated Complaint. Dkt. No. 129. The Parties, while actively litigating, explored potential resolution of the litigation. On March 1, 2022, TMNA and DIAM withdrew their pending motions to dismiss without prejudice and with leave to refile. Dkt. Nos. 152 and 153.

After the filing of the motion to dismiss, the parties explored the option of a global settlement and engaged in extensive arm's length negotiations for several months. During the negotiations, the Parties jointly moved the Court to appoint Patrick Juneau as Settlement Special Master, and the Court appointed Mr. Juneau on November 3, 2021.

Over the course of several months, the Parties also engaged in extensive formal and confirmatory discovery. As a part of formal discovery, Defendants produced, and Plaintiffs processed and reviewed, about 655,000 documents containing approximately 1.5 million pages of

documents related to the Recall, the design and operation of the subject fuel pumps, warranty data, failure modes attributed to the subject fuel pumps, Defendants' investigation into the defect, and the defect countermeasure development and implementation. Toyota also produced a key corporate representative knowledgeable about the vehicles and parts at issue for an interview. The Parties' confirmatory discovery addressed the factual and legal issues in the litigation, including important concepts, technical matter, and the terms that are addressed by the Settlement.

After the Parties agreed on the material terms of the Settlement Agreement, they negotiated attorneys' costs and fees in person in New York City, facilitated by Special Master Juneau.

C. Settlement Terms

Toyota has agreed to provide substantial relief to Class Members, subject to the terms and conditions detailed in the proposed Settlement Agreement. *See* Preliminary Approval Memorandum, Dkt. No. 163, at pp. 8-10. Relief includes a multi-faceted Customer Support Program, an Extended New Parts Warranty, a Loaner/Towing Program, and an out-of-pocket expense claim reimbursement process, and other terms.[3] *See id.*; Dkt. No. 162.

In return for the relief provided in the proposed Settlement Agreement, the Class has agreed to release and discharge Toyota from any and all claims that were, could have been, or may be asserted in this Action, or that relate to the Subject Vehicles' fuel pumps and/or associated parts. Settlement Agreement, Dkt. 162, at § VII. Notwithstanding the foregoing, Class Representatives

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3 The Settlement Agreement also provides that Class Counsel will make an application for an award of attorneys' fees in the amount of $28,500,000.00, which is the agreed-upon mediator's number from Special Settlement Master Juneau,and for reimbursement of their out-of-pocket costs and expenses in an amount not to exceed $500,000.00. *See* Settlement Agreement § IX. Further, the Settlement Agreement provides that Class Counsel may petition the Court for service awards of up to $3,500.00 per Class Representative who had their vehicles inspected by the Defendants for their time in connection with the action, or up to $2,500 per Class Representative who did not have their vehicles inspected by Defendants for their time in connection with the action. *See id.* § IX.B. Plaintiffs' counsel will address these requests in their Motion and Memorandum of Law in Support of their Requested Award of Attorneys' Fees, Reimbursement of Expenses, and Request for Class Representative' Service Awards.

and other Class members are not releasing claims for personal injury, wrongful death or physical property damage (except to the Fuel Pump in the Covered Vehicle itself) from the covered vehicle. *See id.*, at § VII.B.

1. Additional Vehicles: Customer Support Program

For Class Members who still own or lease Additional Vehicles as of the Final Effective Date, Toyota will offer the Customer Support Program to provide prospective coverage for repairs (including parts and labor) needed to correct defects, if any, in materials or workmanship in the Fuel Pumps. Toyota will begin implementation of the Customer Support Program no later than 30 days after the Final Effective Date. Coverage for Additional Vehicles will continue for 15 years, measured from the date of first use. Class Members with Additional Vehicles whose fuel pumps are being replaced pursuant to the Customer Support Program will also be provided with a loaner or rental vehicle and/or options to have the vehicle towed. *See* Settlement Agreement, at Section III.A.

2. Subject Vehicles and SSC Vehicles: Extended New Parts Warranty

Toyota will also extend the new parts warranty coverage for the fuel pump kit replaced on the Subject Vehicles, pursuant to the Recall, and the SSC Vehicles, pursuant to the SSC. The extended warranty will last for 15 years, measured from July 15, 2021, and up to 150,000 miles, whichever comes first. As with the Class Members with Additional Vehicles, Class Members who own or lease SSC Vehicles or Subject Vehicles whose pumps are being replaced pursuant to the Extended Warranty shall be provided with loaner or rental vehicles and/or towing options. *See id.* at Section III.B.

3. Out-Of-Pocket Expense Claim Reimbursement

For Class Members who previously incurred out-of-pocket expenses to repair or replace a

fuel pump of covered vehicles that were not otherwise reimbursed and were incurred prior to the Final Effective Date, Toyota has agreed to reimburse, pursuant to the conditions listed in the proposed Settlement Agreement, those who complete and timely return a Claim Form during the Claim Period. *See id* at Section III.C. If the costs occurred after the Initial Notice Date and before the Final Effective Date, the Class Member must provide proof that they were denied coverage by the Toyota dealer prior to incurring the cost. *See id* at Section III.C.1.

D. This Court Preliminarily Approved the Settlement

This Court held that the proposed settlement is fair, reasonable, and adequate under Rule 23(e)(2). *See* Preliminary Approval Order, Dkt. No. 167, at p. 8. In doing so, this Court determined that the settlement was reached in the absence of collusion and is the product of informed, good-faith, arm's-lengths negotiations between the parties and their capable and experienced counsel. *Id.* The Court also found that "the parties have submitted sufficient information for the Court to support that Notice should be disseminated as 'the proposed settlement will likely earn final approval.'" *Id.* (citing Fed. R. CIV. P. 23(e) advisory committee's note to 2007 amendment).

This Court also approved the form and content of the notices to be provided to the Class, as well as the establishment of an internet website for the Settlement, and ordered that the notices be disseminated to the Class as per the Notice Program set forth in the Settlement. The Settlement Notice Administrator was required to send Direct Mail Notice by U.S. Mail, proper postage prepaid to Class Members, as identified by data to be provided to the Settlement Notice Administrator. *Id.* In issuing preliminary approval, this Court ordered that initial class notice was to be disseminated no later than two business days from the date of the Preliminary Approval Order, with notice to be substantially completed by November 11, 2022, and the Settlement Notice Administrator to file the results of the dissemination of notice with the Court by December 5, 2022. *Id.* Toyota will

then discuss the results of the dissemination of notice in its supplemental memorandum of law in support of the settlement, which is due by December 9, 2022. *Id.*

II. ARGUMENT

A. This Court Has Jurisdiction to Consider and Rule on the Settlement

1. The Court Has Original Jurisdiction Over All Claims

This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2) because Plaintiffs' Third Amended Complaint alleges that, in the aggregate, Plaintiffs' claims and the claims of the other members of the Class exceed $5,000,000 exclusive of interest and costs; and members of the class are citizens of states other than Toyota's home state. *See* Third Am. Complaint, Dkt. No. 160, at ¶ 52; *see also Shulman v. Chaitman LLP*, 392 F. Supp. 3d 340, 350 (S.D.N.Y. 2019) ("The Class Action Fairness Act . . . confer[s] federal jurisdiction over any class action involving (1) 100 or more class members, (2) an aggregate amount in controversy of at least $5,000,000, exclusive of interest and costs, and (3) minimal diversity, *i.e.*, where at least one plaintiff and one defendant are citizens of different states.") (citations and internal quotation marks omitted). In addition, the existence of original jurisdiction authorizes this Court to exercise supplemental jurisdiction under 28 U.S.C. §1367(a) over the remaining state law claims. *See* 28 U.S.C. § 1367(a) ("[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action ... that they form part of the same case or controversy under Article III.").

2. The Court Has Personal Jurisdiction Over Plaintiffs and All Class Members

This Court has personal jurisdiction over the Plaintiffs, who are parties to this litigation and have agreed to serve as representatives for the Class. The Court also has personal jurisdiction over absent Class Members because due process compliant notice has been provided to the Class.

The Supreme Court in *Phillips Petroleum Company v. Shutts*, 472 U.S. 797, 811-12 (1985), held that a court properly exercises personal jurisdiction over absent, out-of-state Class members where the court and the parties have safeguarded absent Class members' right to due process.

The extraordinary notice provided to Class Members will be discussed in further detail in Toyota's Supplemental Memorandum in Support of Final Approval. The notice provided to the class, combined with the opportunity to object and appear at the Fairness Hearing, fully satisfies due process in order to obtain personal jurisdiction over a Rule 23(b)(3) class. *See Phillips Petroleum Co.*, 472 U.S. at 811-12 (finding that the district court obtains personal jurisdiction over the absentee class members by providing proper notice of the impending class action and providing absentees with an opportunity to be heard or an opportunity to exclude themselves from the class).

3. Notice Satisfied the Requirements of Rule 23(c) and (e) and Due Process

Under Rule 23(e)(1) and 23(c)(2)(B), the Court must direct the best notice that is practicable under the circumstances in a reasonable manner to all Class Members who would be bound by the proposed Settlement. *See Simerlein v. Toyota Motor Corp., et al.*, No. 3:17-cv-1091, 2019 WL 2417404, at *16 (D. Conn. June 10, 2019) ("[T]he court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.") (citing FED. R. CIV. P. 23). Here, Class Notice was accomplished through a combination of Direct Mail Notice, Publication Notice, notice through the settlement website, Long Form Notice, and social media notice. *See* Settlement, Dkt. 162, p. 25. The Settlement Notice Administrator will file the Results of the Dissemination of the Notice with the Court by December 5, 2022. *See* Preliminary Approval Order, Dkt. 167, at 16. Toyota will discuss the Notice Program in full, including the results of the Notice Program, in its Supplemental Brief in Support of Final Approval to be filed by December 9, 2022. *Id.*

B. The Motion for Final Approval Should be Granted Because of the Fairness, Reasonableness, and Adequacy of the Proposed Settlement

The claims of a certified class may be settled only with court approval, and the Court may approve a settlement "only after a hearing and only on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Effective December 1, 2018, Rule 23(e)(2) was amended to provide that a court may only approve a settlement after a hearing and only after finding that it is fair, reasonable, and adequate after considering: (A) the class representatives and class counsel have adequately represented the class;[4] (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate;[5] and (D) the proposal treats class members equitably relative to each other.

The 2018 Committee Notes recognize that, prior to the December 1, 2018 amendment (the "Amendment"), each circuit had developed its own list of factors to be considered in determining whether a proposed class action settlement was fair, reasonable and adequate. *See* Fed. R. Civ. P. 23(e)(2), Advisory Committee Notes. The goal of the Amendment is not to displace any such factors. *See id.* Rather, according to the Committee Notes, the Amendment is intended to direct the parties to present the settlement to the court in terms of a shorter list of core concerns by focusing on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal. *See id*; *see also Nichols v. Noom, Inc.*, No. 20-CV-3677 (KHP), 2022 WL 2705354, at *7 (S.D.N.Y. July 12, 2022); *Nichols*, 2022 WL 2705354, at *7; *Huffman v. Prudential Insurance Company of America,* No. 2:10-cv-05135, 2019

4 The factor "the class representatives and class counsel have adequately represented the class" will be addressed in Plaintiffs' brief in support of final approval of the class action settlement.

5 To determine whether the relief is adequate, the Court must consider (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).

WL 1499475, at *3 (E.D. Pa. Apr. 4, 2019).

Many of the requirements set forth in the amendments to Rule 23(e)(2) have long been used in the nine-factor test adopted by the Second Circuit in *Grinnell*. *In re Hudson's Bay Co. Data Sec. Incident Consumer Litig.*, No. 18-CV-8472 (PKC), 2022 WL 2063864, at *6 (S.D.N.Y. June 8, 2022) (citing *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2nd Cir. 1974)). Moreover, notwithstanding the Amendment to Rule 23, courts in the Second Circuit have continued to apply the nine factors set forth in *Grinnell* in determining final approval of class settlements.[6] *See, e.g.*, *In re Patriot Nat'l, Inc. Sec. Litig.*, 828 F. App'x 760, 762-63 (2d Cir. 2020), (endorsing use of *Grinnell* factors following amendments)."Importantly, 'not every factor must weigh in favor of [the] settlement, rather the court should consider the totality of these factors in light of the particular circumstances.'" *Nichols*, 2022 WL 2705354, at *7 (quoting *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 456 (S.D.N.Y. 2004)). As is fully explained below, the proposed Settlement should be finally approved because the Settlement satisfies the factors enumerated in *Grinnell*. *See In re Patriot Nat'l*, 828 Fed. Appx. at 762-763.

1. Public Policy Strongly Favors Class Action Settlements

The Second Circuit has long recognized "the strong judicial policy in favor of settlements, particularly in the class action context. *In re PPDAI Grp. Inc. Sec. Litig.*, No. 18-CV-6716 (TAM), 2022 WL 198491, at *3 (E.D.N.Y. Jan. 21, 2022) (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A.,*

6 The *Grinnell* factors are: (I) the complexity, expense and likely duration of the litigation; (2) the reaction of the class; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. 495 F.2d at 463. The first factor is discussed in Section II.B.4.i.; the second factor will be discussed in Toyota's supplemental brief in support of Final Approval; the third factor is discussed in Section II.B.4.ii.; the fourth factor is discussed in Section II.B.4.iii.; the fifth factor is discussed in Section II.B.4.iv.; the sixth factor is discussed in Section II.B.4.v.; the seventh factor is discussed in Section II.B.4.vi.; and the discussion of the eighth and ninth factors are combined in Section II.B.4.vii, *infra.*

Inc., 396 F.3d 96, 116–17 (2d Cir. 2005)); *Christine Asia Code, Ltd. v. Yun Ma*, No. 1:15-md-02631, 2019 WL 5257534, at *8 (S.D. N.Y. Oct. 16, 2019) ("The law favors compromise and settlement of class action suits.").

In assessing a settlement, a court should neither substitute its judgment for that of the parties who negotiated the settlement, nor conduct a mini-trial on the merits. *Mendez v. MCSS Rest. Corp.*, No. 16 CIV. 2746 (RLM), 2022 WL 3704591, at *4 (E.D.N.Y. Aug. 26, 2022) ("If the settlement was achieved through experienced counsel's arm's length negotiations, 'absent fraud or collusion, courts should not substitute their judgment for that of the parties who negotiated the settlement.") (citation and internal quotation marks omitted); *Nichols,* 2022 WL 2705354, at *7 ("Absent fraud or collusion, courts should be hesitant to substitute their judgment for the parties who negotiated the settlement."). In this case, and as is discussed in more detail below, it is clear that the proposed Settlement is entitled to the strongest presumption of fairness. Accordingly, the Court should grant final approval to the Settlement.

2. The "Presumption of Fairness" Is Warranted Because the Proposed Settlement is the Product of Serious, Informed, Non-Collusive and Arm's Length Negotiations

Even under the more rigorous standard governing final approval, where a settlement has been negotiated at arm's length by experienced, informed counsel, there is a presumption that it is fair and reasonable. *See Wal-Mart Stores,* 396 F.3d at 117; *see also Mendez*, 2022 WL 3704591, at *4.

A court may also consider whether the settlement was reached with the assistance of a judicial officer or other experienced neutral. *See Machniewicz v. Uxin Ltd*., 19-CV-822 (MKB) (VMS), 2021 WL 9409860, *2 (E.D.N.Y. Sept. 8, 2021) (approving of global settlement of federal and state court securities class action that "was negotiated at arm's length" after a "mediation conducted by an experienced mediator who was familiar with [the federal] Action and the State

Court Action"); *Godson v. Eltman, Eltman, & Cooper, P.C.*, 328 F.R.D. 35, 53 (W.D.N.Y. 2018) (citing cases and noting that an experienced mediator's involvement weighs heavily in favor of a finding of procedural fairness of a negotiated final settlement).

Here, there should be little doubt that the proposed Settlement between the Defendants and the Class was the product of serious, informed, non-collusive negotiations. The Settlement was negotiated by experienced, informed counsel for several months where the Parties thoughtfully considered each other's positions and diligently worked to reach a resolution of this matter. The fact that the Settlement was assisted by an experienced mediator, the Court-appointed Settlement Special Master Patrick A. Juneau,[7] is further evidence that the Settlement Agreement was the product of serious, informed, non-collusive negotiations. *See Godson*, 328 F.R.D. at 53; *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 618 (S.D.N.Y. 2012).

3. The Proposed Settlement Treats Class Members Equitably, Has No Obvious Deficiencies, and Does Not Improperly Grant Preferential Treatment to the Named Plaintiffs or Segments of the Class

The proposed Settlement does not provide "unduly preferential treatment of class representatives or segments of the class." Manual for Complex Litigation 4th § 21.632, at 321. As a preliminary matter, a settlement need not provide the exact same settlement to every class member in order for a court to approve a settlement. *See In re Facebook, Inc., IPO Sec. &*

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7 Mr. Juneau has served as court-appointed Special Master or Administrator to oversee and distribute billions of dollars of settlement funds to hundreds of thousands of class members in numerous large, high-profile, complex and multi-party federal and state mass tort class actions. Among many distinctions, Mr. Juneau has served as the court appointed Special Master in numerous federal and state cases including the following complex and multi-party matters, including, among others, in the "Deepwater Horizon" Multi-District Litigation. *See In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 20/0,* MDL No. 2179 Section J (E.D. La.). Other class actions in which Mr. Juneau has assisted in include the following: *In re: Takata Airbag Products Liability Litigation (Economic Loss Class Actions)*, (MDL No. 2599, 15-02599-MD-MORENO, S.D. Fla.), *In re: Vioxx Products Liability Litigation* (Case No. 05-md-01657, E.D. La.), *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation* (Case No. 10-ml-02151, C.D. Cal.*), In re: Guidant Corp. Implantable Defibrillators Product Liability Litigation* (Case No. 05-md-1708, D. Minn.), and *In re: Avandia Marketing, Sales Practices Products Liability Litigation* (Case No. 07-md-01871, E.D. Pa.).*See* Affidavit of Patrick A. Juneau, Dkt. No. 148-2.

Derivative Litig., 343 F. Supp. 3d 394, 415 (S.D.N.Y. 2018), *aff'd sub nom. In re Facebook, Inc.*, 822 F. App'x 40 (2d Cir. 2020) (granting final approval to class settlement where different groups received different amounts of relief according to damages)); *In re Veeco Instruments Inc. Sec. Litig,* 05-MDL-165, 2007 WL 4115809, at *13 (S.D.N.Y. Nov. 7, 2007) ("[T]here is no rule that settlements benefit all class members equally."). The Court instead should whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D); *see also In re PPDAI Grp. Inc. Sec. Litig.*, No. 18-CV-6716 (TAM), 2022 WL 198491, at *3 (E.D.N.Y. Jan. 21, 2022) (approving of equitable allocation of proceeds based on relative loses).

Here, there is no basis to believe that there are obvious deficiencies in the proposed Settlement or that certain Class Members received preferential treatment. The proposed Settlement Agreement provides specific and targeted benefits according to the status of the Class Vehicle. For Additional Vehicles, which have not yet been recalled or have a Special Service Campaign, the Class Members will receive a Customer Support Program which provides prospective coverage for 15 years.

Class Members who have a Subject Vehicle or a SSC Vehicle benefit from the Extended New Parts Warranty, which provides an extension of the new parts warranty coverage for the fuel pump kit replaced on the Subject Vehicles or SSC Vehicles for 15 years, measured from July 15, 2021, and up to 150,000 miles.

Regardless of the type of vehicle, Class Members have access to a Loaner/Towing Program and also may submit claims to have certain out-of-pocket expenses reimbursed. The Settlement also provides a procedure for reconsideration for Class Members that are denied benefits under the Customer Support Program or the Extended New Parts Warranty. Class Members also benefit

from the oversight of the Special Master. *See* Settlement Agreement, at Section III.[8]

4. The Proposed Settlement Falls Within the Range of Final Approval[9]

(a) The Complexity, Expense and Likely Duration of the Litigation Weigh in Favor of Settlement

Litigation of this Action through trial would be complex, costly, risky, uncertain, and long. "Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *Thompson v. Community Bank, N.A.*, 8:19-cv-919, 2021 WL 4084148, at *6 (N.D.N.Y. Sept. 8, 2021) (quoting *In re Austrian & German Bank Holocaust Litig.,* 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000)); *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, No. 05-MC-1720, 2019 WL 6875472, at *38 (E.D.N.Y. June 18, 2020) (finding that class action suits' have a well-deserved reputation as being most complex). Courts have consistently held that, unless the settlement is clearly inadequate, its acceptance and approval are preferable to the continuation of lengthy and expensive litigation with uncertain results. *See TBK Partners, Ltd. v. W. Union Corp.,* 517 F. Supp. 380,389 (S.D.N.Y. 1981), *aff'd,* 675 F.2d 456, 460 (2d Cir. 1982).

This case is no exception. As discussed above, the Parties have engaged in extensive informal discovery. To engage in contested discovery and motion practice in this action - which would include extensive written discovery, numerous fact and expert depositions, contested

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8 Moreover, the proposed Settlement Agreement grants Class Counsel the right to petition the Court for service awards of up to $3,500.00 forthe four Class Representatives who had their vehicles inspected and for up to $2,500 for the twenty-nine Class Representatives who did not have their vehicle inspected. *See* Settlement Agreement § IX.B. This award is within the Court's discretion and, thus, will not be unreasonable in light of the Class Representatives' roles in this case. *See Pearlstein et al. v. Blackberry Limited, et al.*, No. 13CIV7060CMKHP, 2022 WL 4554858, at *11 (S.D.N.Y. Sept. 29, 2022) (approving service awards that were "commensurate with the level of [the class representatives'] involvement in the action").

9 The Settlement Notice Administrator will file the Results of the Dissemination of the Notice with the Courtby December 5, 2022 and the List of Opt-Outs by December 8, 2022. *See* Preliminary Approval Order, Dkt. 167, at 16. As such, the reaction of the Class to the proposed Settlement will be discussed in Toyota's Supplemental Brief in Support of Final Approval to be filed by December 9, 2022. *Id.*

motions, including for class certification, for expert exclusion, and for summary judgment, among others – would be a costly, uncertain, risky, and time-consuming process for the Parties and the Court. Settlement, on the other hand, permits a prompt resolution of this action that provides certain and specific relief to the Class. This result will be accomplished years earlier than if the case proceeded to judgment through trial and/or appeals. Settlement therefore will "grant relief to all class members without subjecting them to the risks, complexity, duration and expense of continuing litigation." *In re Hi-Crush Partners L.P. Securities Litig.*, No. 12-civ-8557, at *9 (S.D.N.Y. Dec. 19, 2014) (quoting *Global Contracting*, 225 F.R.D. at 456-457); *In re AOL Time Warner, Inc. & ERISA Litig.,* No. 02 Civ. 5575, 2006 U.S. Dist. LEXIS 78101, at *24 (S.D.N.Y. Sept. 28, 2006)).

(b) The Stage of the Proceedings and the Amount of Discovery Completed Weigh in Favor of Settlement

Sufficient discovery has occurred for Plaintiffs to have adequate information on the merits to allow the Parties to responsibly resolve the litigation. *See, e.g.*, *Christine Asia Co. v. Yun Ma*, No. 1:15-MD-02631 (CM) (SDA), 2019 WL 5257534, at *11 (S.D.N.Y. Oct. 16, 2019) (citing *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. at 458); *In re PPDAI Grp. Sec. Litig.*, 2022 WL 198491, at *10 ("For this factor to favor settlement, the court must ensure that the parties have conducted a factual investigation sufficient for the court to evaluate the proposed settlement and confirm that pretrial negotiations were adequately adversarial."). The focus of this analysis is whether the Parties had adequate information about their claims in order to have clear view of the strengths and weaknesses of their cases. *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 426 (S.D.N.Y. 2001) (finding the plaintiffs engaged in significant investigation to warrant approval of the settlement where plaintiffs' counsel reviewed thousands of pages of documents

produced by Defendants and conducted interviews of people with knowledge of the facts alleged in the actions).

The Parties have engaged in extensive formal discovery here, and the Defendants have produced over 1.5 million pages of documents concerning the issues in this litigation. As part of confirmatory discovery, Defendants have produced a substantial number of additional documents, tangible things, and information requested by Class Counsel related to the design and operation of the original equipment fuel pump and the Recall. The documents produced also included the design, operation, development, implementation, and the effectiveness of the countermeasure. Also, as part of confirmatory discovery, Denso and Toyota each provided Plaintiffs with a confirmatory witness interview, which each covered a wide range of topics including Plaintiffs' allegations in the litigation, the discovery that had been produced, and the countermeasure and relief provided to the class.

The effort made by counsel on both sides confirms that the Parties are sufficiently well-apprised of the facts of this litigation, and the strengths and weaknesses of their respective cases, to negotiate and finalize an acceptable settlement. *See Godson*, 328 F.R.D. at 55-56 ("Under this factor the relevant inquiry. . . 'is whether the plaintiffs have obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement.'") (quoting *Sinus Buster Prod. Consumer Litig.*, No. 12-cv-2429, 2014 WL 5819921, at *9 (E.D.N.Y. Nov. 10, 2014)); *Mendez*, 2022 WL 3704591, at *7 ("[T]he pretrial negotiations and discovery must be sufficiently adversarial that they are not designed to justify a settlement . . . , but an aggressive effort to ferret out the facts helpful to the prosecution of the case.") (quoting *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 176 (S.D.N.Y. 2000)).

(c) The Risks of Establishing Liability Support Settlement

Even in cases where establishing liability appears to be a near certainty, courts recognize the inherent risks of submitting any claim to a jury. *See, e.g., Paguirigan v. Prompt Nursing Employment Agency LLC, et al.*, 1:17-cv-01302, 2022 WL 6564755, (E.D.N.Y. Apr. 7, 2022) (approving of settlement on remand after district court granted, and Second Circuit affirmed, plaintiffs' motion for summary judgment as to liability); *McBean v. City of New York,* 233 F.R.D. 377, 387 (S.D.N.Y. 2006) (noting that "while it appears likely that plaintiffs would be able to establish liability at trial, things change").As recognized in, *In re Metropo. Life Ins. Co. Sales Practices Litig.,* MDL 1091, 1999 WL 33957871, at *28 (W.D. Pa. Dec. 28, 1999), and in language equally applicable here, there are a "number of ... potential legal and factual obstacles that plaintiffs would [face] if this litigation [were to proceed] to a trial on the merits." The proposed Settlement avoids the potential downsides if this Action were to continue as litigation. *See Mikhlin v. Oasamia Pharma. AB*, 2021 WL 1259559, at *5 (E.D.N.Y. Jan. 6, 2021) ("Settlement is favored in cases in which 'plaintiffs would have faced significant legal and factual obstacles to proving their case.'") (quoting *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. at 459); *In re Cendant Corp. Litig.,* 264 F.3d 201, 237 (3d Cir. 2001). Here, while Toyota is confident (and Plaintiffs are likely equally confident) that their position is correct, there is no assurance that a jury would agree. There are simply too many variables that could affect the outcome of a trial to provide any guarantee of establishing Toyota's liability.

In their Third Amended Class Action Complaint, Plaintiffs have sought redress on a class-wide basis alleging that certain Toyota and Lexus vehicles equipped with low-pressure Denso fuel pumps are defective in violation of several states' consumer protection statutes. *See* Third Am. Complaint, at 193-194, 201-209. Plaintiffs also allege common law counts including strict liability

and negligent recall/undertaking, breach of express warranty, breach of implied warranty, unjust enrichment, fraudulent omission under various state laws, and the Magnuson-Moss Warranty Act. *See id.* at 193 – 385. Each of these statutes has various standards, and it is impossible to know exactly how a jury will find on one, much less all, of the remaining counts.

Additionally, Toyota has several arguments in favor of a motion to dismiss or for summary judgment of these claims, which were raised in its motion to dismiss the Second Amended Complaint.[10]If the Action is not resolved through settlement, Toyota would raise the arguments, among others, in a motion to dismiss the Third Amended Complaint.

Taking all of those arguments into account, the Parties have agreed that the certain benefits of the proposed Settlement are preferable to the uncertainty, delay and risks of continuing with this litigation, including, but not limited to, trial. *See Nichols*, 2022 WL 2705354, at *9 ("The settlement ends all uncertainties of litigation and weighs in favor of approval.").

(d) The Risks of Establishing Damages Also Support Settlement

The need for the Class Members to prove their right to damages and non-monetary relief entails considerable risk. Plaintiffs argue damages for diminution in value of their Covered Vehicles in their Third Amended Complaint, *see e.g.*, Third Am. Complaint, Dkt. No 753, 772, 867, 888, 945, however it will be very difficult, if not impossible, for Plaintiffs to establish those damages on a classwide basis as not only are they difficult to prove on a classwide basis, but the recall corrected the complained of issue. "[D]iminution in value damages pose great difficulties in a class action context, particularly when considering the challenge of proving such damages on a classwide basis." *Asghari v. Volkswagen Grp. of Am., Inc.,* No. CV1302529MMMVBKX, 2015

10 Toyota filed a motion to dismiss the Second Amended Complaint, which was withdrawn without prejudice on March 1, 2022, Dkt. Nos. 129 and 152. Plaintiff filed a Third Amended Complaint on September 7, 2022, the same day they filed their motion for preliminary approval. Dkt. Nos. 161 and 162.

WL 12732462, at *26 (C.D. Cal. May 29, 2015); *see also Flores v. FCA US, LLC*, No. 19-cv-10417, 2020 WL 7024850, *4 (E.D. Mich. Nov. 30, 2020) (finding that the repairs of the plaintiffs' vehicles through the recalls, "removed the defect upon which the plaintiffs' diminished-value injury claim is based.").

In contrast to the risk of no damages, the proposed Settlement provides targeted and prospective relief, including providing coverage for repairs and a claims process for certain reimbursements of previously incurred out-of-pocket expenses. It is not merely a "risk" but a certainty that this relief could not be obtained as the result of a trial. *See Banyai v. Mazur,* 00 Civ. 9806, 2008 WL 5110912, at *4 (S.D.N.Y. Dec. 2, 2008) (noting, as a component of the risk involved, that continued litigation could not have brought about the benefits obtained by settlement).

(e) The Risks of Maintaining the Class Action Through the Trial Support Settlement

Plaintiffs also face the risk of adverse rulings or findings if the action is maintained through trial. *See Godson*, 328 F.R.D. at 56 ("If settlement has any purpose at all, it is to avoid a trial on the merits because of the uncertainty of the outcome.") (quoting *In re PaineWebber Ltd P'ships Litig.,* 171 F.R.D. 104, 126 (S.D.N.Y. 1997), *aff'd,* 117 F.3d 721 (2d Cir. 1997)). If the case proceeds on a litigation basis, Toyota expects to argue that individual questions preclude certification of a litigation class and that a litigation class is not manageable or a superior method to resolve Plaintiffs' claims. Should the Court certify the Class for litigation purposes, Toyota would likely move to decertify, forcing another round of briefing. In fact, the Second Circuit has affirmed decertification of a class that was previously certified pursuant to Rule 23(a) and (b)(3). In *Mazzei v. The Money Store*, 829 F.3d 260 (2d Cir. 2016), the court affirmed decertification of a

litigation class, even after a jury verdict in favor of class of plaintiffs. The court found that the jury's rejection of a key factual underpinning for class certification made that the decertification was appropriate, relying in part on the explicit provision of Fed. R. Civ. P. 23 for decertification at any time "before final judgment." *Id.*

Toyota may also seek permission to file an interlocutory appeal under Fed. R. Civ. P. 23(f). In other words, the risk, expense, and delay permeate such a process, and a settlement eliminates those possibilities. *See Thompson*, 2021 WL 4084148, at *7; *Beckman v. KeyBank, N.A.,* 293 F.R.D. 467, 476 (S.D.N.Y. 2013).

(f) The Ability of the Defendants to Withstand a Greater Judgment

Where the other *Grinnell* factors weigh in favor of approval, "the defendants' ability to withstand a higher judgment, standing alone, does not suggest that the settlement is unfair." *Rosi v. Aclaris Therapeutics, Inc.*, No. 19-CV-7118 (LJL), 2021 WL 5847420, at *6 (S.D.N.Y. Dec. 9, 2021) (quoting *D'Amato* v. *Deutsche Bank,* 236 F.2d 78, 86 (2d Cir. 2001)); *see also In re PPDAI Grp. Inc. Sec. Litig.,* 2022 WL 198491, at *12.

Here, Class Members are receiving substantial value through the proposed Settlement, including (a) a Customer Support Program, (b) an Extended New Parts Warranty, (c) a Loaner/Towing Program with the Customer Support Program and the Extended New Parts Warranty; and (d) reimbursement of certain out-of-pocket expenses. Therefore, given that the other factors weigh in favor of approving the Settlement, the possibility that the defendants might be able to withstand a greater judgment should not weigh in against approval of the Settlement.

(g) Range of Reasonableness of the Proposed Settlement in Light of the Best Possible Recovery and all the Attendant Risks of Litigation[11]

The eighth and ninth *Grinnell* factors weigh in favor of settlement as the proposed Settlement amount and all of the benefits provided by the proposed Settlement is reasonable. *See Frank v. Eastman Kodak Co.,* 228 F.R.D. 174, 186 (W.D.N.Y. 2005) ("Instead, 'there is a range of reasonableness with respect to a settlement - a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.'") (internal citation omitted). The final two *Grinnell* factors require that this Court determine whether the instant Settlement falls within this "range of reasonableness." *Nichols*, 2022 WL 2705354, at *9 (quoting *In re Payment Card*, 330 F.R.D at 47-8 ("The range of reasonableness of the settlement in light of the best possible recovery, and the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation, are two *Grinnell* factors that are often combined for purposes of the analysis."); *McBean,* 233 F.R.D. at 388.The eighth factor considers the reasonableness of the proposed Settlement compared with the best possible recovery; the ninth considers the reasonableness of the proposed Settlement considering all the risks of proceeding with the litigation. *Grinnell,* 95 F.2d at 463. Applying these factors to the Settlement in this case provides ample support for final approval: the proposed Settlement is not only reasonable but superior to any realistic outcome at trial.

The determination of whether a settlement is reasonable "does not involve the use of a 'mathematical equation yielding a particularized sum.'" *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (*quoting In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp.

11 These factors have been combined.

2d 164, 178 n.9 (S.D.N.Y. 2000)). "Instead, 'there is a range of reasonableness with respect to a settlement – a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.'" *Id.* (*quoting Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)).In fact, as was noted in Grinnell, 495 F.2d at 455 n.2, "there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." *Esposito v. Nations Recovery Ctr., Inc.*, No. 3:18-cv-02089 (VLB), 2021 U.S. Dist. LEXIS 98231, at *25 (D. Conn. May 25, 2021). The relief provided to the Class is reasonable under all of the circumstances, as noted above.

Defendants agreed to provide (1) a CSP for all Class Members who own or lease Additional Vehicles providing prospective warranty coverage for repairs, which includes a Loaner/Towing Program; (2) an extension of the new parts warranty coverage for the fuel pump kit replaced on the Subject Vehicles or the SSC Vehicles, which shall also be provided with the same loaner or rental vehicles and/or towing options provided to the Subject Vehicles under the Recall(s); (3) an Out-of-Pocket Class Process where Class Members may submit Claims for previously paid out-of-pocket expenses incurred to repair or replace a Fuel Pump of Covered Vehicles that were not otherwise reimbursed and that were incurred prior to the Final Effective Date; (4) a reconsideration procedure; and (5) settlement oversight by Settlement Special Master Juneau. Moreover, the broad definition of Class ensures every person who own or owned, purchase(d) or lease(d) a Covered Vehicle, not just people who currently own or lease a Covered Vehicle, are eligible for the settlement relief. *See* Settlement Agreement §§ II.A.10.; III.

These are substantial benefits being provided to the Class. Thus, the proposed Settlement fits within the range of final approval and is certainly reasonable considering the risks of liability,

maintaining a class, and establishing damages as identified above. *See In re Sony Corp. SXRD Rear Projection Television Mktg., Sales Practices and Prods. Liab. Litig.*, No. 09-MD-2102, 2010 WL 3422722 (S.D.N.Y. Aug. 24, 2010) (finding that final approval of the settlement was appropriate where the settlement provided a warranty extension and fulfillment and claim process). Accordingly, all nine of the *Grinnell* factors weigh in favor of final approval.

III. THE COURT SHOULD ISSUE A PERMANENT INJUNCTION

The rights and interests of the Class Members and the jurisdiction of this Court will be impaired if Class Members who have not opted out of the Class proceed with other actions alleging substantially similar claims to those asserted in this Action and/or those claims that are resolved and/or released pursuant to the Settlement Agreement. Numerous federal courts have recognized their power to enjoin class members who did not opt out of a settlement from filing or continuing to prosecute state court actions that would interfere with the implementation of a class action settlement. *See, e.g.*, *Jenkins v. National Grid USA Service Company, Inc.*, 2022 WL 2301668 at *4 (E.D.N.Y. Jun. 24, 2022) (permanently barring and enjoining class members from prosecuting any released claims against the released persons as a permanent injunction was necessary to protect the Court's authority to effectuate the Settlement Agreement and protect its judgments)*; Simerlein v. Toyota Motor Corporation*, 2019 WL 2417404 at *29; *In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.)*, 770 F.2d 328, 333 (2d Cir. 1985) (holding that a permanent injunction was appropriate where "the district court had before it a class action proceeding so far advanced that it was the virtual equivalent of a res over which the district judge required full control."). Settlement Class Members are afforded an opportunity to opt out of the proposed Settlement which justifies an injunction to aid the Court in its management of the Settlement. *See Adams v. S. Farm Bureau Life Ins. Co.,* 493 F.3d 1276, 1291 (11th Cir.

2007).Courts in this Circuit have routinely found that Courts can bar and permanently enjoin all Class Members, except those who have timely and validly opted-out of the Settlement, from participating in any other individual class lawsuit against the Releasees concerning the Released Claims. *See, e.g.*, *Swetz v. GSK Consumer Health, Inc.,* No. 7:20-CV-4731-NSR, 2021 WL 5449932 at *5 (S.D.N.Y. Nov. 22, 2021); *Marino v. COACH, Inc.*, No. 1:16-cv-1122-VEC (OTW), 2021 WL 827647 at *5 (S.D.N.Y. Mar. 3, 2021); *Silva* v. *Little Fish, Corp.,* No. 10-CV-7801, 2012 WL 2458214 at *3 (S.D.N.Y. May 1, 2012). The Court should issue a permanent injunction pursuant to the exceptions of the Anti-Injunction Act, 28 U.S.C. § 2283. Courts may issue a permanent injunction pursuant to the "necessary in aid of" exception to the Anti-Injunction Act. 28 U.S.C. § 2283. This exception allows a federal court to effectively prevent its jurisdiction over a settlement from being undermined by pending parallel litigation in state courts. *In re PaineWebber Ltd. P'ships Litig.*, No. 94 CIV. 8547 SHS, 1996 WL 374162, at *2 (S.D.N.Y. July 1, 1996) ("Injunctive relief may be considered necessary in aid of a federal court's jurisdiction when designed to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case.) (internal quotations removed); *In re Joint E. &* S. *Dist. Asbestos Litig.*, 134 F.R.D. 32, 38 (E.D.N.Y. 1990); *Juris v. Inamed Corp.*, 685 F.3d 1294, 1339 (11th Cir. 2012) ("[T]he 'in aid of its jurisdiction' exception [may] be used 'to enjoin parallel state class action proceedings that might jeopardize a complex federal settlement and state in person am proceedings that threaten to make complex multidistrict litigation unmanageable.").Another exception to the Anti-Injunction Act permits injunctions where it is necessary to protect or effectuate a court's judgment, such as where a court has finally approved a class action settlement.*See In re Baldwin-United Corp.*, 770 F.2d at 333; *Juris*, 685 F.3d at 1340; *In re Asbestos School Litig.*, No. 83-cv-0628, 1991 U.S. Dist.

LEXIS 5142, at *3 (E.D. Pa. Apr. 16, 1991), aff'd mem., 950 F.2d 723 (3d Cir. 1991).

This Court also has the authority to issue the requested injunction under the All Writs Act, 28 U.S.C. § 1651(a). The All Writs Act permits this Court to issue "all writs necessary or appropriate in aid of [its] jurisdiction [] and agreeable to the usages and principles of law." 28 U.S.C. § 165l(a). The All Writs Act permits a federal district court to protect its jurisdiction by enjoining parallel actions by class members that would interfere with the court's ability to oversee a class action settlement. *See In re Baldwin-United Corp.*, 770 F.2d at 335; *Henson v. Ciba-Geigy Corp.*, 261 F.3d 1065, 1068 (11th Cir. 2001) ("[A] district court has the authority under the [All Writs] Act to enjoin a party to litigation before it from prosecuting an action in contravention of a settlement agreement over which the district court has retained jurisdiction."); *In re Linerboard Antitrust Litig.,* 361 F. App'x 392, 396 (3d Cir. 2010).This authority extends to enjoining third parties if necessary. *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05-MD-1720 JG, 2014 WL 4966072, at *31 (E.D.N.Y. Oct. 3, 2014). Accordingly, this Court should issue a permanent injunction to prevent those Settlement Class Members who will not opt out of the Settlement from interfering with the enforcement of the Settlement and jeopardizing the rights and interests of the Settlement Class Members and this Court's jurisdiction.

IV. CONCLUSION

For the foregoing reasons, the Parties respectfully request that the Motion be granted, and the Court enter an order granting final approval to the proposed Settlement and permanently

enjoining Class Members who did not opt out of the Settlement from filing or continuing to prosecute actions that would interfere with the implementation of the proposed Settlement.

Dated: New York, New York
November 18, 2022

Respectfully submitted,

/s/ John P. Hooper

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CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2022, the above and foregoing document was electronically filed on the CM/ECF system and served in accordance with the Federal Rules of Civil Procedure, the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, and/or the United States District Court for the Eastern District's Rules on Electronic Service, which will send notification of such filing to all counsel of record.

/s/ John P. Hooper
John P. Hooper